

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KYLEE ANDERSEN and MICHAEL  
ANDERSEN, guardian ad litem minor O.A.,  
JESSICA ASBRIDGE, KEVIN ASBRIDGE,  
guardian ad litem minor K.A. and minor L.A.,  
BRYCE BASKIN, FAITH BASKIN,  
CRYSTAL COOPER, guardian ad litem  
minor T.C., AMBER FLETCHER, guardian  
ad litem minor N.F., minor O.F., and minor  
A.F., EDWARD GODOY, guardian ad litem  
minor Z.G. and minor R.G., MELISSA  
GODOY, KATIE KEELEY, MICHAEL  
KEELEY, guardian ad litem minor D.K. and  
minor A.K., GEOFFREY LUNDWALL,  
guardian ad litem minor X.L., SHANA  
LUNDWALL, COLBY ORR, guardian ad  
litem minor C.O., DANIELLE ORR, JULIO  
OSORIO, REBEKAH OSORIO, FRANCES  
PAULINO, guardian ad litem minor A.P. and  
minor M.P., CHANTINA POWERS, PIERRE  
POWERS, guardian ad litem minor A.P.,  
minor T.P., and minor C.P., CHELSEA  
JOHNSON, guardian ad litem minor A.J. and  
minor R.J., VANESSA STROTHER,  
guardian ad litem minor KE.S. and KA.S.,  
KELSEY WHITE, guardian ad litem minor  
S.W. and minor T.W., ALEXANDRA PITTS,  
guardian ad litem minor A.P., and DUREIU  
PITTS,

Plaintiffs,

v.

CASE NO. 3:21-cv-5391

ORDER GRANTING PLAINTIFFS'  
UNOPPOSED MOTION FOR APPROVAL  
OF MINOR SETTLEMENTS

LEWIS MCCHORD COMMUNITIES LLC,  
a Delaware limited liability company,  
LINCOLN MILITARY HOUSING LEWIS  
MCCHORD PM LLC, a Delaware limited  
liability company, JOHN and JANE DOES 1-  
50,

Defendants.

## INTRODUCTION

This matter comes before the Court on Plaintiffs’ unopposed motion for approval of their proposed settlement. Dkt. No. 83. The Court has considered the motion and the rest of the record, including the Settlement Guardian ad Litem’s reports recommending approval of the proposed settlement. The Court held a hearing on the motion and heard comments from counsel, the Settlement Guardian ad Litem, and individual Plaintiffs about the proposed settlement. Based on the papers submitted and statements made at the hearing, the Court GRANTS the motion for the reasons stated below.

## BACKGROUND

Plaintiffs are tenants who resided at properties owned and operated by Defendants LMH Lewis-McChord on the Joint Base Lewis McCord (“JBLM”). Dkt. No. 23 at 20. During their tenancies, Plaintiffs experienced leaks, water damage, moisture intrusion, and other effects of decay and disrepair, including exposure to mold. *See generally id.* The proposed settlement involves 28 minor children from 14 families: specifically, O.A., K.A., L.A., T.C., N.F., O.F., A.F., Z.G., R.G., A.J., R.J., D.K., A.K., X.L., X.L., C.O., A.P., M.P., A.P., A.P., T.P., T.P., A.P., C.P., KE.S., KA.S., S.W., and T.W. of the Andersen, Asbridge, Cooper, Johnson, Keeley, Lundwall, Orrs, Pitts, Powers, White, Fletcher, Godoy, Paulino, and Strother households.<sup>1</sup> *See*

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<sup>1</sup> The Court granted the parties’ stipulated motion to dismiss Plaintiffs Bryce Baskin, Faith Baskin, Julio Osorio, and Rebekah Osorio from this action. Dkt. No. 69 at 1.

1 Dkt. No. 83 at 1. The minor children allege six claims: (1) negligent nuisance, (2) breach of  
2 implied covenant of quiet use and enjoyment, (3) constructive eviction, (4) breach of rental  
3 agreement, (5) breach of implied warranty of habitability, and (6) negligent infliction of  
4 emotional distress. *See* Dkt. No. 23; *see also* Dkt. Nos. 46 at 14; 53 at 12.

5 On February 7, 2023, the Court granted the parties' joint motion to appoint Geoffrey D.  
6 Swindler as settlement guardian ad litem (the "SGAL") to represent the interests of the 28 minor  
7 children. Dkt. No. 67 at 1–2. The SGAL provided the Court a report for each minor child's  
8 claims, and he recommends that the Court approve all the proposed settlements. Defendants  
9 offered each minor child \$10,000 in total, except for A.K. and D.K., each of whom Defendants  
10 offered \$11,250. Plaintiffs' attorneys request 40 percent of the minor children's recovery to  
11 cover their fees. Plaintiffs' attorneys also request additional funds to cover the costs associated  
12 with each child's case ranging from \$38.36 to \$912.17. *See* Dkt. Nos. 83-8 at 13; 83-14 at 16.  
13 Accordingly, the minor children's net recoveries range from \$5,087.83 to \$5,961.64. *See* Dkt.  
14 Nos. 83-8 at 13; 83-4 at 16.

15 On July 11, 2023, the Court held a hearing in which it permitted Plaintiffs' counsel, the  
16 SGAL, and the minor children's parents to speak about the proposed settlement.

17 The proposed settlement orders the parents or legal guardians of the minor Plaintiffs to  
18 deposit the proceeds of their settlement into a Certificate of Deposit or comparable interest-  
19 bearing account in the name of the minor child, to be released to the child upon reaching the age  
20 of majority. *See* Dkt. No. 83-16 at 2. At the hearing, several parents stated they wanted the  
21 flexibility to choose how to deposit the proceeds of their child's settlement. Mrs. Strother, parent  
22 to K.E.S. and K.A.S., requested \$500 be deducted from each child's settlement and given to her so  
23 that she may replace her children's toys, bedding, and clothing that she discarded due to  
24 concerns of mold contamination. Dkt. No. 83-14 at 15. The SGAL raised no objection to this

1 request. Ms. Godoy, parent to R.G. and Z.G., requested that the entire settlement proceeds be  
 2 released to R.G. and Z.G.’s parents.

### 3 DISCUSSION

4 The Court has a “special duty” to “safeguard the interests of litigants who are minors.”  
 5 *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011) (citing Fed. R. Civ. Pro. 17(c)(2)).  
 6 “In the context of proposed settlements in suits involving minor plaintiffs, this special duty  
 7 requires a district court to ‘conduct its own inquiry to determine whether the settlement serves  
 8 the best interests of the minor.’” *Id.* (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th  
 9 Cir. 1978)); *see also Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983) (“[A] court  
 10 must independently investigate and evaluate any compromise or settlement of a minor’s claims  
 11 to assure itself that the minor’s interests are protected, even if the settlement has been  
 12 recommended or negotiated by the minor’s parent or guardian ad litem.”). In carrying out its  
 13 duty, the Court must “supervise the guardian ad litem’s work.” *M.C.S. v. Seattle Sch. Dist. No 1*,  
 14 No. 2:21-CV-00619-LK, 2022 WL 508824, at \*1–2 (W.D. Wash. Jan. 20, 2022).

15 The Ninth Circuit has not provided specific guidance on how courts ought to conduct this  
 16 independent inquiry; however, it has limited the scope of review in federal question cases to  
 17 “whether the net amount distributed to each minor plaintiff in the settlement is fair and  
 18 reasonable, in light of the facts of the case, the minor’s specific claim, and recovery in similar  
 19 cases.” *Robidoux*, 638 F.3d at 1182. Indeed, the Ninth Circuit reversed a district court when it  
 20 focused on the “admittedly large proportion of the total settlement value going to Plaintiffs’  
 21 counsel, instead of reviewing the fairness of each minor’s net recovery in isolation.” *See id.*

22 Based on their comments at the hearing, several of the Plaintiff families are clearly  
 23 dissatisfied with aspects of the legal representation they received in this matter. But when asked  
 24 directly by the Court whether there were any objections to the proposed settlement or its terms,

1 Plaintiffs and their counsel of record answered in the negative. Given the record before the Court  
2 and its role in reviewing the proposed settlement, the Court makes no findings about the  
3 professional conduct of counsel.

4 Turning to the terms of the proposed settlement agreement, the Court finds the proposed  
5 net settlement amounts to the minor children of at least \$5,000 each for their alleged injuries to  
6 be reasonable. The Court makes this finding based on the nature of the claims and defenses, the  
7 multiple litigation risks and burdens presented, and the benefits and certainty provided to the  
8 minor children by resolving the case now. In addition, Ms. Strother requests that she received  
9 funds immediately to replace KE.S.'s and KA.S's toys, bedding, and clothes that were allegedly  
10 damaged by mold, and the SGAL raises no objections to her request. During the hearing,  
11 Ms. Godoy requested that Z.G. and R.G.'s settlement proceeds be dispersed to the family to  
12 cover its general losses rather than as compensation for the harms allegedly suffered by her  
13 children. The Court does not find this request to be in the best interests of Z.G. and R.G., and  
14 therefore, denies the request.

### 15 CONCLUSION

16 Accordingly, the Court APPROVES the settlement on the terms described in the SGAL's  
17 reports and ORDERS as follows:

- 18 1. The Court approves the proposed net settlement amounts to each minor child as  
19 recommended in the SGAL's reports.
- 20 2. The Court finds the fees and costs specified in the SGAL's reports to be reasonable  
21 and approves the amounts for each as recommended in his reports.
- 22 3. The Court orders that \$500 from KE.S.'s and KA.S's net settlement proceeds will go  
23 to the immediate purchase of toys, bedding, and clothes. The Court orders further that  
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- 1 Mrs. Strother's must submit receipt for the purchase of any such items to Mr. Ard  
2 within 45 days of this order.
- 3 4. The parties have agreed that Defendants will pay the SGAL's fees. This payment  
4 must be in addition to the funds guaranteed by the minor settlements.
- 5 5. The parent(s) and/or legal guardian(s) of each minor child are ordered to deposit the  
6 proceeds of each minor child's settlement into a Certificate of Deposit or comparable  
7 interest-bearing account in the name of the minor child, to be released to the child  
8 upon reaching the age of majority.
- 9 6. Plaintiffs must obtain and file with the Court Receipts of Deposit of Funds reflecting  
10 that the net settlement proceeds to each minor child have been deposited as required  
11 above. The Receipts of Deposit must be filed within 30 days of receipt of the funds  
12 from Defendants.
- 13 7. Within ten days of filing of the Receipts of Deposit required above, the parties must  
14 file a stipulated dismissal with Court as to the minor Plaintiffs' claims.

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16 Dated this 13th day of July, 2023.

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Jamal N. Whitehead  
19 United States District Judge  
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